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Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Worldwide Rattan, Inc.
File: B-255801
Date: April 1, 1994

DECISION

Worldwide Rattan, Inc. protests the award of contracts to Agro Logistics Systems, Inc. and Max Blau & Sons, Inc., under invitation for bids (IFB) No. N61119-93-B-0045, issued by the Department of the Navy for rattan furniture. Worldwide challenges the awardees' ability and intent to comply with the Buy American Act.

We dismiss the protest.

When, as here, the Buy American Act, 41 U.S.C. §§ 10a-10d (1988), applies to a procurement, the successful bidders certify whether they will furnish domestic or foreign products. When bidders certify that they will provide domestic products, they are obligated to comply with their certifications. In its initial protest filed on November 19, 1993, Worldwide generally alleged that neither awardee could, or intended to, comply with its certification to supply domestic products as required by the solicitation.

A protester's allegation that a bidder cannot or will not supply domestic products concerns a matter of responsibility which generally we will not review absent a showing of possible fraud or bad faith, or that definitive responsibility were not followed. Bryant Org., B-228042.2, Jan. 7, 1988, 88-1 CPD ¶ 10. The one exception to the rule is limited to situations where it is apparent from the protester's submission that the successful bidder might not furnish domestic products and the contracting officer should be aware of that possibility. See Autospin, Inc., B-233778, Feb. 23, 1989, 89-1 CPD ¶ 197; Navistar, B-256522, Feb. 28, 1994, aff'd, Navistar--Recon., B-256522.2, Mar. 24, 1994. Worldwide's bare assertion in its protest that the awardees' do not intend to comply with the Buy American Act simply does not fit within this exception and we, therefore, dismiss that general allegation.

In its comments on the agency report filed on January 5, 1994, the protester first provided the details of its reasoning as to why neither awardee can comply with its Buy

American Act certification and first alleged that the agency should have been aware of the alleged noncompliance prior to award.


We will not consider the detailed allegations filed on January 5 because they are untimely. Each allegation is predicated on either: (1) privately developed information (not shared with the agency prior to the protester's January 5 comments) concerning the awardees' proposed suppliers--the identity of which Worldwide suggests first became apparent to the protester upon examining copies of the bids which were contained in the agency report; or (2) Worldwide's comparative analysis of the awardees' bid prices--which the protester suggests first became known to it upon examining the agency report. The protester argues that had the agency adequately analyzed the bids and the bid prices, a further investigation of the awardees' intent and ability to comply with their Buy American Act certifications would have been required and should have led to rejection of both bids.

Bid protests are serious matters which require effective and equitable procedural standards assuring a fair opportunity to have objections considered consistent with the goal of not unduly disrupting the procurement process. Accordingly, our Bid Protest Regulations, 4 C.F.R. Part 21 (1993), contain strict timeliness requirements for filing protests. Under these rules, protests not based upon alleged improprieties in a solicitation must be filed no later than 10 working days after the protester knew, or should have known, of the basis for protest, whichever is earlier. 4 C.F.R. § 21.2(a)(2). Moreover, a protester cannot sit idly by while awaiting information that provides the basis for its protest, but instead must diligently pursue the information within a reasonable time. Thomas May Constr. Co., B-255683, Mar. 23, 1994, 94-1 CPD ____.

The information forming the basis for Worldwide's detailed allegations consisted of the awardees' bids and the bid abstract. Since this procurement was conducted by sealed bidding, there was a public opening of bids, Federal Acquisition Regulation (FAR) § 14.402-1(a), and once bids were opened on October 19, the public, including the protester, was permitted to examine the bids submitted. FAR § 14.402-1(c). The record contains no evidence that Worldwide made any effort to examine or obtain copies of any bids, or a copy of the abstract, once bids were opened or at any time prior to receiving the award announcement in November 1993, even though it appears from the record that the protester had concerns about the ability of the awardees to comply with the terms of the Buy American Act set forth in the IFB. Where there is a public bid opening, it is incumbent upon bidders to act promptly after bid opening to obtain

information on the bids received, including copies of the bids themselves if necessary, so that upon receipt of notice of award, the bidders will be aware of any alleged defect in the winning bid (or bids) that would provide a basis for protest. Thomas May Constr. Co., supra. Here, we find that Worldwide, by waiting until it received the agency report in this matter in December to discover the basis for its detailed allegations filed on January 5, did not diligently pursue the basis of its protest as it should have promptly sought the publicly available information prior to award. Accordingly, we dismiss the detailed allegations as untimely.

The protest is dismissed.


John Van Schaik
Acting Assistant General Counsel

¹We note that the agency reports that it is closely monitoring each awardee's contract to ensure compliance with the certification to provide domestic products.